

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

DEANNA BRANAUGH and
MOLLY THAYER,

Plaintiffs,

v.

BOLIVER WITTERN and
DERBY TRUCKING, LLC,

Defendants.

Case No. 22-4037

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs, by and through their counsel, Cutler Law Firm, LLP, for their causes of action against the above-named Defendants, state and allege as follows:

THE PARTIES

1. Plaintiffs Deanna Branaugh and Molly Thayer are mother and daughter and are residents of South Dakota.

2. At all times relevant, Defendant Derby Trucking, LLC was an Iowa Corporation with its principal place of business in Iowa.

3. Upon information and belief, Defendant Boliver Wittern was at all times relevant a resident of Sioux City, Iowa, and an employee of Derby Trucking acting within the scope of his employment or agency.

JURISDICTION AND VENUE

4. The amount in controversy between each of the Plaintiffs and each of the Defendants exceeds the sum of \$75,000, exclusive of interest and costs.

5. Jurisdiction of this Court is conferred by 28 USC § 1332.

FACTUAL BASIS

6. On or about September 24, 2020, Plaintiff Deanna Branaugh was driving a 2018 Chevrolet Equinox northbound on South Dakota Highway 37 near its intersection with South Dakota Highway 46 in Bon Homme County, South Dakota.

7. Plaintiff Molly Thayer was a passenger in the vehicle driven by Deanna Branaugh.

8. South Dakota Highway 37 is a two-way, undivided roadway with a posted speed limit of 65 miles per hour.

9. Defendant Wittern was driving a 2020 International semi-tractor and trailer southbound on South Dakota Highway 37.

10. Defendant Wittern began to make a left turn onto South Dakota Highway 46 and pulled directly into the path of the vehicle in which the Plaintiffs were traveling.

11. Defendant Wittern failed to yield to Plaintiffs' vehicle.

12. Defendant Wittern collided with Plaintiffs' vehicle at the intersection of Highway 37 and Highway 46.

13. The South Dakota Highway Patrol was notified of the crash and Trooper Emily Brigham responded to the scene.

14. Trooper Brigham noted in her report that Defendant Wittern began a left turn when Plaintiff Deanna Branaugh's vehicle was only a short distance away and traveling the speed limit of 65 miles per hour.

15. Deanna Branaugh was at all times operating her vehicle in a safe and lawful manner for the road conditions and despite taking reasonable evasive action was unable to avoid the collision with Defendant Wittern, who appeared suddenly and without warning in Plaintiffs' lane of travel.

16. Trooper Brigham issued a citation to Defendant Wittern for failure to yield to right-of-way in violation of SDCL § 32-26-19.

17. Plaintiffs were transported to Avera St. Michael's Hospital in Tyndall, South Dakota for treatment of their injuries.

18. As a direct and proximate result of Defendant Wittern's actions, Plaintiffs sustained the damages described herein, for which Defendant Wittern and Defendant Derby Trucking are liable.

COUNT 1: NEGLIGENCE

19. Plaintiffs reallege the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

20. Defendant Wittern operated his vehicle in a negligent and careless manner, including, but not limited to: (a) driving without due caution; (b) failing to keep a proper watch; (c) failure to yield; (d) reckless and/or careless driving; and (e) operating his vehicle without regard to the presence or physical safety of Plaintiffs.

21. As a direct and proximate result of Defendant Wittern's negligence, Plaintiffs suffered injuries that are permanent and disabling which required medical treatment and resulted in medical expenses.

22. As a direct and proximate result of Defendant's negligence, Plaintiffs have experienced and will experience in the future, physical pain, suffering, mental anguish, loss of enjoyment of life, disability, emotional distress, and embarrassment.

23. As a direct and proximate result of Defendant's negligence, Plaintiffs have incurred, and will likely incur in the future, expenses for medical care, lost income and other expenses.

COUNT 2: NEGLIGENCE PER SE

24. Plaintiffs reallege the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

25. Law enforcement cited Defendant Wittern for violating SDCL § 32-26-19 because he failed to yield to Plaintiffs.

26. SDCL § 32-26-19 is designed to protect the public safety of travelers on public roads and highways.

27. Plaintiffs are a member of a class of people meant to be protected by SDCL § 32-26-19.

28. Defendant's conduct constitutes negligence as a matter of law.

29. As a direct and proximate result of Defendant's negligence, Plaintiffs suffered injuries that are permanent and disabling which required medical treatment and resulted in medical expenses.

30. As a direct and proximate result of Defendant's negligence, Plaintiffs have experienced, and will experience in the future, physical pain, suffering, mental anguish, loss of enjoyment of life, disability, emotional distress, and embarrassment.

31. As a direct and proximate result of Defendant's negligence, Plaintiffs have incurred, and will likely incur in the future, expenses for medical care, lost income and other expenses.

COUNT 3: NEGLIGENCE PER SE

32. Plaintiffs reallege the preceding paragraphs of this Complaint and incorporate them by reference as if fully set forth herein.

33. The crash and resulting injuries and damages to Plaintiffs were caused solely by the negligence of Defendant Wittern.

34. Defendant Wittern was operating his vehicle on behalf of Defendant Derby Trucking.

35. The crash with Plaintiffs occurred within the course and scope of Defendant Wittern's employment with Defendant Derby Trucking.

36. Defendant Wittern was operating his vehicle for the benefit of, or in furtherance of the interests of, Defendant Derby Trucking.

37. Defendant Wittern's actions when he struck Plaintiffs' vehicle were reasonably foreseeable and thus imputable to Defendant Derby Trucking under the doctrine of respondeat superior.

38. As a result of Defendant Wittern's negligence, Defendant Derby Trucking is vicariously liable for Defendant Wittern's negligent acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request a judgment against Defendants as follows:

1. For full and fair compensatory, general, and special damages in an amount which the jury determines is just and proper to compensate Plaintiffs for all injuries sustained as a result of Defendants' conduct;
2. For Plaintiffs' costs and disbursements herein;
3. For interest as allowed by law; and
4. For any other and further relief which the Court determines is just and proper.

PLAINTIFFS DEMAND TRIAL BY JURY

Dated this 14th day of March, 2022.

CUTLER LAW FIRM, LLP



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Attorneys for Plaintiffs

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Deanna Branaugh and Molly Thayer

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael D. Bornitz
Cutler Law Firm, LLP

140 N. Phillips Ave., 4th Floor

DEFENDANTS

Boliver Wittern and Derby Trucking, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input checked="" type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	IMMIGRATION	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 448 Education			
	PRISONER PETITIONS			
	Habeas Corpus:			
	<input type="checkbox"/> 463 Alien Detainee			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	Other:			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			
	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Personal Injury - Commercial Carrier Motor Vehicle Collision

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 14, 2022

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE